



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: ICR, Inc.--Request for Reconsideration

File: B-223033.2

Date: November 4, 1986

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### DIGEST

1. Arguments raised by the protester in its request for reconsideration do not show that prior decision, upholding agency's determination that protester was nonresponsible due to inadequate finances, was erroneous.
2. Since a proper finding by the agency that the protester lacked adequate finances to perform the contract work by itself justifies a determination of nonresponsibility, it would be academic to consider the propriety of other independent findings which themselves would support a determination of nonresponsibility.
3. Claim for costs is denied where General Accounting Office affirms decision denying protest.

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### DECISION

ICR, Inc. requests that we reconsider our decision in ICR, Inc., B-223033, Aug. 13, 1986, 86-2 C.P.D. ¶ 184. In our prior decision, we denied ICR's protest against the rejection of ICR's low bid on 14 line items, due to ICR's nonresponsibility, under invitation for bids (IFB) No. 2FC-HDW-A-A4053Q issued by the General Services Administration (GSA) for the procurement of file folders.

We affirm our prior decision.

### BACKGROUND

The IFB contained a total of 159 line items and contemplated awards of multiple requirements contracts to furnish 40 types of file folders to several listed locations. Bids were opened on January 30, 1986. ICR submitted the lowest bid on 19 line items with a total estimated price of more than

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\$1 million. The contracting officer requested that plant capacity and financial capability reports be prepared on ICR so that ICR's responsibility could be assessed.

The plant capacity report concluded that ICR was incapable of performing the work bid upon. The report stated that although ICR had written commitments for equipment, none of the necessary equipment was currently in the plant and there was likely to be a considerable delay before ICR could perform at a satisfactory level.

The financial capability report, dated March 14, 1986, recommended that no award be made to ICR because, among other things, ICR had a small net worth (under \$6,000) and had a net loss in 1985 and because the items on which ICR submitted the low bid totaled in price over 9 times more than ICR's 1985 yearly sales. The financial capability report indicated that ICR's financial statements were inaccurate and did not conform to generally accepted accounting procedures.

By letter dated March 27, 1986, ICR sent GSA new information concerning actual and potential grants and loans which ICR had received or expected to receive. The contracting officer forwarded this additional information to the chief of the credit and finance office (chief) for consideration in redetermining ICR's financial responsibility. The credit and finance office was specifically requested to consider the possibility of a recommendation of a partial award to ICR because ICR was the low bidder on a number of individual line items with an estimated dollar value of less than \$2,000.

After reviewing the additional information submitted to GSA by ICR, the chief again recommended "no award" to ICR. The chief found that ICR's loans and grants were contingent and not in place and the chief again questioned ICR's accounting system. The chief found ICR's finances did not warrant any award and the credit and finance office notified the contracting officer on April 14, 1986, that the recommendation of "no award" was unchanged. Based upon the recommendations from the credit and finance office that "no award" should be made to ICR due to questionable finances, and the director of the contract management division, region 4 that ICR was "incapable" of timely performance, the contracting officer determined that ICR was a nonresponsible bidder. Award of the items on which ICR was the low bidder was made to the next low bidder on April 29, 1986.

In its initial protest ICR contended that GSA acted without any reasonable basis in determining that ICR was nonresponsible and that GSA ignored important information from financial supporters and product and equipment suppliers that indicated that ICR had the ability to obtain the necessary financing and production capacity to perform the contract work on which ICR was the low bidder.

In our decision we stated that in the absence of information clearly indicating that a prospective contractor is responsible, a contracting officer is required to make a determination of nonresponsibility. Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.103(b) (1985); Lamari Electric Co., B-216397, Dec. 24, 1984, 84-2 C.P.D. ¶ 689. We also said that we will not question a nonresponsibility determination unless the protester demonstrates bad faith by the agency or a lack of any reasonable basis for the determination. System Development Corp., B-212624, Dec. 5, 1983, 83-2 C.P.D. ¶ 644. We concluded that the record provided a reasonable basis for the preaward survey findings and the contracting officer's determination that ICR lacked adequate finances to perform the work bid upon and that ICR was not a responsible contractor.

For example, ICR admitted that just its start-up costs and minimum necessary financing would be approximately \$200,000 to \$245,000. When the preaward survey was conducted, first in late March 1986, then in April 1986, the record showed that ICR did not have adequate firm financing necessary for contract performance. Although ICR stated that by mid-April it had received a private loan of \$70,000, and two grants totaling \$62,000, the record showed that only a grant for \$32,000 was firmly committed to ICR and ICR planned to rely on other loans and a loan guarantee which were at that time merely applied for, contingent, and unfinalized.

Because there were no binding written commitments for the additional financial resources, we said that it was not unreasonable for the GSA credit and finance preaward survey team to factor into its "no award" recommendation the contingent nature of these resources. See Engineering and Professional Services, B-219657, B-219657.2, Dec. 3, 1985, 85-2 C.P.D. ¶ 621. We concluded that the "no award" recommendation of the credit and finance preaward survey team had a reasonable basis and the contracting officer could properly rely upon that recommendation in determining that ICR was nonresponsible. Martin Electronics, Inc., B-221298, Mar. 13, 1986, 86-1 C.P.D. ¶ 252.

Since the finding that ICR had inadequate finances to perform the contract work by itself justified the determination of nonresponsibility, we did not consider ICR's contentions concerning its ability to timely perform the work and the preaward survey finding that ICR was "incapable" of timely performance.

#### Request for Reconsideration

ICR argues that the contracting officer, in determining that its finances were inadequate, failed to follow the guidelines of FAR, 48 C.F.R. § 9.104-1(a), which states that to be determined responsible, a prospective contractor must "have adequate financial resources to perform the contract, or the ability to obtain them" (emphasis added). ICR contends that by April 29, 1986, the date when the items on which ICR was low bidder were awarded to the next low bidder, it had established and demonstrated an ability to obtain adequate financial resources to perform the contract work.

FAR, 48 C.F.R. § 9.104-3(b), states that acceptable evidence of a prospective contractor's ability to obtain required resources "normally consists of a commitment or explicit arrangement, that will be in existence at the time of contract award" to acquire the needed resources. At the time that the second preaward survey was completed in mid-April, with the recommendation of "no award," most of ICR's financing was contingent and unfinalized. As stated above, we believe it was not unreasonable for the GSA preaward survey team to factor into its "no award" recommendation the merely contingent nature of the resources. Engineering and Professional Services, B-219657, B-219657.2, supra.

ICR argues that FAR, 48 C.F.R. § 9.105-1(b)(3) requires that information on financial resources (and performance capability) "shall be obtained or updated on as current a basis as is feasible up to the date of the award." ICR contends that since its financing "was being developed, secured, and committed at a frantic pace up to the date on which the award was made," it was incumbent upon the contracting officer to update financial information regarding ICR up to the date of the award.

We agree with ICR that generally responsibility information should be updated on as current a basis as is feasible up to the date of award. We have held that a contracting officer should reconsider a determination of responsibility when two

conditions are present: ample time and a material change in a principal factor on which the determination is based. See Camel Manufacturing Co.--Request for Reconsideration, B-218473.4, Sept. 24, 1985, 85-2 C.P.D. ¶ 327. However, a procuring agency is not required to delay award indefinitely while a bidder attempts to cure the causes for the firm being found nonresponsible. Urban Masonry Corp., B-213196, Jan. 3, 1984, 84-1 C.P.D. ¶ 48.

While ICR states that its financing "was being developed, secured and committed at a frantic pace" up to April 29, 1986, the date of award of a contract for the items on which ICR was low bidder, ICR has not demonstrated that the contracting officer failed to consider material information presented by ICR. Camel Manufacturing Co., B-218473.3, July 11, 1985, 85-2 C.P.D. ¶ 40. Only ICR's smallest loan, for \$30,000, which would not materially impact ICR's financial status, became secured between the mid-April "no award" preaward survey recommendation and the April 29 award date. Moreover, the fact remains that much of ICR's proposed financing (e.g., Mellon Bank loan of \$150,000, Pittsburgh Urban Redevelopment Authority loan of \$52,000) was still contingent and unsecured as of April 29. Engineering and Professional Services, B-219657, B-219657.2, supra. We conclude that ICR has not shown that the contracting officer's nonresponsibility determination, based upon inadequate finances, was unreasonable as based on outdated information.

In its initial protest, ICR raised the argument that even if it was properly determined to have inadequate financial resources to perform all of the contract work on which it submitted the low bid, since the estimated prices of some line items were very small (under \$2,000) it should have been considered for a partial award. GSA responded in its report to our Office that both the credit and finance office and the contracting officer considered ICR for partial award, but because of the contingent nature of ICR's financial arrangements, a partial award was considered to be inappropriate. In its comments on the agency report, ICR did not rebut that part of the agency report or again raise the issue of a partial award. Therefore, in our prior decision, we stated that we considered ICR to have abandoned this protest ground. See The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 C.P.D. ¶ 218; Radionic Hi-Tech, Inc., B-219116, Aug. 26, 1985, 85-2 C.P.D. ¶ 230.

In its request for reconsideration ICR contends that it did not intend to abandon the issue of partial award but merely

did not realize that it should either rebut the agency's position or further raise the issue in its comments. However, in its reconsideration request, ICR once again does not rebut the agency's position concerning partial award. Under these circumstances, we find the agency's arguments to be reasonable and therefore we will not review the merits of this issue.

Finally, ICR once again questions the GSA nonresponsibility determination as it relates to ICR's plant facility and technical capability to timely perform the work. However, as stated in our prior decision, since the finding that ICR had inadequate finances to perform the contract work in itself justified the determination of nonresponsibility, we need not consider the other independent bases which would also support the determination of nonresponsibility. FAR, 48 C.F.R. § 9.104-1(a); Engineering and Professional Services, B-219657, B-219657.2, supra.

ICR has also requested that it be paid its bid preparation expenses and its cost of pursuing the protest. Because we affirm our prior decision denying the protest, we also deny ICR's claim for costs. Ira T. Finley Investments--  
Reconsideration, B-222432.2, Sept. 4, 1986, 86-2 C.P.D.

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*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel